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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/876,336   | 06/07/2001  | C. Edward Luker      | CG-838              | 9101             |
| 27868  | 7590        | 02/13/2004           | EXAMINER            |                  |
| JOHN F. SALAZAR<br>MIDDLETON & REUTLINGER<br>2500 BROWN & WILLIAMSON TOWER<br>LOUISVILLE, KY 40202 |             |                      | MAI, TRI M          |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3727                | 16               |

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/876,336

Applicant(s)

LUKER, C. EDWARD

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-24, 26-33, 35-39, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-24, 26, 27, 37-39, 41 and 42 is/are allowed.
- 6) ☒ Claim(s) 33, 35, 36 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 28, "said rib having an axial length...said outer skirt" is confusing. "An axial length" indicates one dimension equal to both the second face of the inner most skirt and the first face of the outermost skirt. This is inconsistent with the disclosure. The disclosure shows that the dimensions of the inner most skirt and the first face of the outermost skirt are different. Thus, to provide a dimension equal to both dimensions of the inner most skirt and the first face of the outermost skirt is inconsistent with the disclosure.

### ***Claim Rejections - 35 USC § 103***

2. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landen (3944101) in view of Earls (4273247). Landen teaches a top having an interior surface and an exterior surface, an annular outer skirt 15, having an inwardly directed first face, and outwardly directed second face, a bottom edge and a first diameter at the top edge of the outward face (at 20 in Fig. 2) being greater than a second diameter at the bottom edge of the second face (at 15 in Fig. 2), an inner skirt 13. Landen meets all claimed limitations except for the ribs extending from the inner most skirt to the outermost skirt. Earls teaches that it is known in the art to provide ribs extending from the inner most skirt to the outermost skirt. It would have been obvious to one of ordinary skill in the art to provide ribs extending from the inner most skirt to the outermost skirt in Landen as taught by Earls to provide added reinforcement.

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With respect to the rib being opposite an outer skirt rib, it is noted that there are a plurality of circumferential ribs in Landen, and the ribs in Earls would be opposite these circumferential ribs.

Regarding claim 32, it is noted that the term “portion” is broad. The ribs in Earls, each has a plurality of portion, including one extending toward the inner skirt and one extending toward the outer skirt.

Regarding claim 29, note the ribs 31 having a length substantially equal to the first axial length of the inner skirt.

Regarding claim 30, the combine closure of Landen does not teach the second portion of the rib having a length substantially equal to the axial length of the outer skirt. It would have been obvious to one of ordinary skill in the art to extend the ribs at the first edge with a length substantially equal to the axial length of the outer skirt to provide added reinforcement.

Regarding claim 31, note the taper lower edge.

3. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Landen rejection, as set forth above, and further in view of Marques et al. (5238130). The Landen combination meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in Robinson as taught by Marques to provide a better seal.

4. Claims 32, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Earls (4273247) in view of Landen (3944101), and further in view of Herr (5671853). Earls teaches a first and second skirt with a plurality of ribs. It is noted that the term “portion” is broad. The

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ribs in Earls, each has a plurality of portion, including one extending toward the inner skirt and one extending toward the outer skirt as claimed. Earls meets all claimed limitations except for the at least one thread attached to the inner surface. Landen teaches that it is known in the art to provide threads attached to an inner surface. It would have been obvious to one of ordinary skill in the art to provide threads attached to an inner surface in Earls as taught by Landen to open the container easily and/or to manufacture the container easily.

With respect to the ribs on the outside surface, Herr teaches that it is known in the art to provide ribs 114 on the outside surface. It would have been obvious to one of ordinary skill in the art to provide the ribs on the outside surface of Earls to grip the closure easily.

5. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Earls rejection, as set forth above, and further in view of Marques et al. (5238130). The Earls combination meets all claimed limitations except for the closure having a flange. Marques teaches that it is known in the art to provide a flange 44. It would have been obvious to one of ordinary skill in the art to provide a flange in Earls as taught by Marques to provide a better seal.

#### ***Response to Arguments***

6. Applicant's arguments filed 02/04/04 have been fully considered but they are not persuasive. Please note that the amended claims, including 28 and 32, do not read over the prior art of record as set forth above.

#### ***Allowable Subject Matter***

7. Claims 22-26, 27, 37-39, and 41-42 allowed.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

